82-1370

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No. _____

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1982

GEORGE L. KARAPINKA,

Petitioner

vs.

UNITED STATES GOVERNMENT,

Respondent

UNITED STATES DISTRICT
JUDGE CAROL LOS MANSMANN,

Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

GEORGE L. KARAPINKA
Petitioner pro se
3557 Collins Ferry Road, B-14
Morgantown, West Virginia 26505

(304) 599-8686

QUESTIONS PRESENTED

I. Whether the district court can transfer venue without stating pusuant to which statute it is doing so,specially when the defendant did not request transfer pusuant to any statute and in the absence of any facts supporting such a transfer.

II. Whether the district court can transfer venue without ruling on plaintiff's motion to resolve the question of venue which was filed in the district court nine month before the issuance of the transfer order, precipitating thus needless appeals.

III. Whether the court of appeals in arriving at its decision can use documents submitted by the defendant, documents that were never filed in the district court.

IV. Whether the district court can file an appeal in the United States Court of Appeals for the plaintiff without his knowledge and against his will.

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Petitioner pro se prays that a writ of certiorari issue to review the questions presented above.

CITATIONS TO OPINIONS BELOW

The United States Court of Appeals for the Third Circuit, Circuit Judge Weis, denied petitioner's Petittion for Writ of Mandamus with the Memorandum and Order dated December 6, 1982, a copy of which is anexed hereto as a-1*. The Opinion and the Order of the United States District Judge Carol Los Mansmann are anexed hereto as a-3 and as a-12 respectively.

JURISDICTION

The Petition for Writ of Mandamus was denied December 6, 1982; Petition for Rehearing was denied January 3, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254.

STATUTORY PROVISIONS

28 U.S.C. Sec. 1404(a): Change of Venue

(a) For the convenience of parties and

* Appendix below

witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

STATEMENT OF THE CASE

Petitioner's pro se complaint charging the United States Government with violation of Chapter VII of the Civil Rights Act of 1964, as amended in 1972, in dismissing him from his position of Research Chemist with the U.S. Department of Energy in August 1980 was filed June 8, 1981. He is seeking reinstatement to his former position with backpay, back benefits, and damages in excess of $10,000. Jurisdiction under 42 U.S.C. Sec. 2000e-16 is invoked.

July 17, 1981 U.S. Government filed the motion to dismiss for lack of venue in the Western District of Pennsylvania. In his response petitioner showed that the venue in the Western District of Pennsylvania was proper because due to his heath, justice could only be served in that District. Proper ve-

nue under 42 U.S.C. Sec. 2000e-5(f)(3) was confirmed by the District Court for the Western District of Pennsylvania by the Order dated October 30, 1981. In this Order U.S. Government's motion to dismiss was denied.

October 23, 1981 U.S. Government filed its motion to transfer the case to the Northern District of West Virginia (a-14,16). November 2, 1981 petitioner filed his Motion to Resolve the Question of Venue (a-17,18). The District Court so far did not rule on this Motion. By the Order of the Magistrate the U.S. Government was ordered to file a brief in support of its Motion by December 11, 1981, the petitioner was ordered to file his answer by January 8, 1982. December 9, 1981 U.S. Government's brief was served upon the petitioner. This brief was never filed in the District Court, as the Clerk's docket entries show. Petitioner's answer, which was ordered by the Magistrate November 17, 1981, was filed January 7, 1982 (a-20). The petitioner showed there that the Western District of Pennsylvania was un-

questionably the most convenient forum for everybody. January 14, 1982 the Magistrate issued her Report and Recommendation on this motion, recommending that the motion to transfer be denied, because the U.S. Government did not show any reasons for transfer; the parties were permitted ten days to file objections to Magistrate's Report and Recommendation. The U.S. Government did not file any objections.

January 13, 1982 the petitioner filed his Motion for Summary Judgment Hearing supported by the Affidavit of George L. Karapinka which showed that the petitioner was dismissed from his position with the U.S. Department of Energy on the basis of the perjurious testimony of the U.S. Governments witness. January 19, 1982 the Magistrate issued her Report and Recommendation, recommending that the motion for summary judgment(?) be denied, although the petitioner moved for the summary judgment hearing. Since no ruling by the District Court was

passed on this Motion for Summary Judgment Hearing in 30 days, the petitioner filed notice of appeal February 16, 1982. The appeal was dismissed by the U.S. Court of Appeals for the Third Circuit May 7, 1982 for lack of jurisdiction.

August 9, 1982 U.S. District Judge Carol Los Mansmann's Order (a-12) granted U.S Government's motion to transfer case to the Northern District of West Virginia. The attached Opinion of Honorable Carol Los Mansmann (a-4) states mistakenly, among other things, that the only unresolved motions are:"a Motion for Summary Judgment filed by the Plaintiff and a Motion to Transfer filed by the Defendant". Factually the Motion filed by the plaintiff was for Summary Judgment Hearing. Honorable Carol Los Mansmann fails to mention petitioner's pending Motion to Resolve the Question of Venue (a-17, 18) which was filed November 2, 1981. Judge Los Mansmann further suggests (a-7) that the

petitioner amended his complaint. The quoted information (a-7) was taken from the information supplied by the petitioner in answer to the Magistrate's questions; it was not an amendment to the complaint. The Honorable Judge concludes (a-9) that in his reading of 42 U.S.C. 2000e-5(f)(3) (pursuant to that statute the District Court confirmed the venue in the Western District of Pennsylvania on October 30, 1981), the venue is not proper in the Western District of Pennsylvania. Further the Opinion states (a-10) that the defendant seeks transfer of this action to the Northern District of West Virginia pursuant to 28 U.S.C. Sec. 1404(a). This statement is totally unsupported by the record, nowhere on the record did the U.S. Government seek the transfer pursuant to 28 U.S.C. Sec. 1404(a).

August 14, 1982 petitioner mailed his Motion for Stay of Order (dated August 9, 1982) to the District Court for the Western District of Pennsylvania. The District Court

never ruled on this Motion which was based on the Petition for Writ of Mandamus to the U.S. Court of Appeals for the Third Circuit, which was mailed to the Court of Appeals August 17, 1982.

By a copy of a letter dated August 17, 1982 from Gilbert W. Conley, Clerk District Court for the Western District Pennsylvania to Thomas F. Stafford, Clerk District Court for the Northern District of West Virginia the petitioner was informed that the District Court for the Western District of Pennsylvania had filed an appeal in petitioner's case.

August 27, 1982 petitioner received notification from the Court of Appeals for the Third Circuit that an appeal No. 82-5504 was filed in petitioner's case and a letter informing him that this appeal will be submitted to a panel for possible dismissal due to a jurisdictional defect. This appeal was filed for the petitioner against petitioner's will.

The Court of Appeals by the Order of October 19, 1982 directed the U.S. Government to file an answer to the petition for mandamus within twenty days.

November 4, 1982 a copy of the Brief by the United States in Opposition to Petition for a Writ of Mandamus containing irrelavant documents that were never filed in the District Court, was served.

November 13, 1982 petitioner mailed to the Court of Appeals for the Third Circuit his Motion to Strike the Brief by the United States in Opposition to Petition for a Writ of Mandamus. The reasons for this Motion were the facts: 1) the Court of Appeals directed the U.S. Government to file an answer not a brief (violation of Rule 21 of F.R.A.P.), 2) the brief was totally irrelavant to the U.S. Government's Motion to Transfer and to the Petition for a Writ of Mandamus, 3) the main reason for this Motion to Strike was the fact that the Brief contained documents never filed in the District

Court, namely the Brief in Support of Motion to Transfer with exhibits, as the Docket Entries of the District Court clearly show. The Court of Appeals did not rule on this motion to strike. Petitioner moved twice for the ruling on that motion to strike. By the Order of Circuit Judge Weis dated January 13, 1983, the motion to strike was denied, thus allowing into the Court of Appeals' record documents like the Brief in Support of Motion to Transfer which were never filed in the District Court.

By the Memorandum and Order dated December 6, 1982 (a-1), the U.S. Court of Appeals for the Third Circuit denied Petition for a Writ of Mandamus, and it suggested to the District Court a modification of the District Court's Order dated August 9, 1982.

December 16, 1982 the modified version (modification suggested by the Court of Appeals) of the Order to transfer (a-13), was received by the petitioner. The same day petitioner's Motion for Stay of that Order un-

til the resolution of instant Petition, was mailed to the District Court for the Western District of Pennsylvania. This Motion was denied.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the resolution by this Court of the questions presented in this Petition will eliminate the conflicting rulings on venue of the U.S. Court of Appeals for the Third Circuit, help streamline the judicial procedure, and eliminate needless appeals.

I. THE DISTRICT COURT CAN NOT TRANSFER VENUE WITHOUT STATING PURSUANT TO WHICH STATUTE IT IS DOING SO, SPECIALLY WHEN THE DEFENDANT DID NOT REQUEST TRANSFER PURSUANT TO ANY STATUTE AND IN THE ABSENCE OF ANY FACTS SUPPORTING SUCH A TRANSFER

There are several statutes governing venue. It is the accepted judicial procedure that when the district court rules on the question of venue, it refers to the particular statute(s) on which it is basing its decision.

The Honorable Los Mansmann, as his trans-

fer of venue Order (a-12) shows did not refer to any statute or to any other authority. The entire Opinion of the Honorable Los Mansmann (a-3) is devoted to his argument on improper venue of petitioner's case in the Western District of Pennsylvania pusuant to 42 U.S.C. 2000e-5(f)(3). The statement of Honorable Los Mansmann that the U.S. Government seeks transfer of the case pursuant to 28 U.S.C. 1404(a) (a-10) is not supported by the record. See Motion to Transfer Case to the Northern District of West Virginia (a-14) and the proposed order (a-16). Nowhere on the record did the U.S. Government request transfer pursuant to 28 U.S.C. Sec. 1404(a). This fact led to the preparation of petitioner's defficient Petition for a Writ of Mandamus. The Court of Appeals in its Memorandum and Order (a-1) denying petitioner's Petition for a Writ of Mandamus, suggested to Honorable Los Mansmann to modify his Order to include 28 U.S.C. Sec. 1404(a). The authority, 28 U.S.C. Sec. 1404(a), was included into the Or-

der (a-13) after the ruling of the Court of Appeals, making it impossible for the petitioner to raise that issue, the appropriatness of 28 U.S.C. Sec. 1404(a), in the Court of Appeals, thus necessitating this Petition for a Writ of Certiorari.

The record in the District Court and in the Court of Appeals for the Third Circuit and the rulings of the Courts show convincingly that the transfer of petitioner's case pursuant to 28 U.S.C. Sec. 1404(a) was not justified.

The unanimous ruling of the Courts on venue is that the plaintiff's choice of forum is of paramount importance. This ruling is summarized by the U.S. Court of Appeals for the Third Circuit in Shutte v. Armco Steel Corporation, 431 F.2d 22 at 25:

> "It is black letter law that a plaintiff's choice of a proper forum is a paramount consideration in any determination of a transfer request, and that choice"*** should not be lightly disturbed." Ungrund v. Cunningham Brothers, Inc., 300 F.Supp. 270, 272 (S.D.Ill.1969). In accord with that sound doctrine, one district court recently correctly observed:"The decision to trans-

fer is in the court's discretion, but the transfer is not to be liberally granted." Handlos v. Litton Industries, Inc., 304 F. Supp. 347, 352 (E.D.Wis.1969). The burden is on the moving party to astablish that a balancing of proper interests weigh in favor of the transfer, Everprest, Inc. v. Phillips-Van Heusen Corp., 300 F.Supp. 757 (M.D.Ala. 1969), and "*** unless the balance of convenience of the parties is strongly in favor of the defendant, the plaintiff's choice of forum should prevail." Owatonna Manufacturing Company v. Melroe Company, 301 F.Supp. 1296, 1307 (D.Minn.1969). (Emphasis supplied.)"

According to Shutte v. Armco Steel Corporation, supra, the Honorable Los Mansmann did not have a single ground for transfer of the case to the Northern District of West Virginia. The petitioner in his answer (a20) named his six witnesses and the locations from which they will have to travel to the site of the trial. The travel for these witnesses to Pittsburgh, Western District of Pennsylvania is unquestionably more convenient than to any location of the District Courtin Northern District of West Virginia. On the other hand, according to District Court's record, the U.S. Government did not name the witnesses it will be using at the

trial nor did it name the locations from which they will have to travel to the site of the trial. Considering the distances from Morgantown, W.V. to Pittsburgh, Pa. (70 miles) and from Morgantown to Clarksburg, W.V. (50 miles), therefore if the trial were to be held in Clarksburg W.V. and any of the witnesses were to travel there from Morgantown, W.V., it would be only 20 miles shorter on I-79 than to Pittsburgh, Pa. For the six petitioner's witnesses Clarksburg, W.V. would be very inconvenient. For example his three witnesses reside in Washington, D.C. and the regular roundtrip air fare on USAir from there to Pittsburgh, Pa. is only $190; but from Washington, D.C. to Clarksburg, W.V. it is $276 (December 14, 1982 quotes).

However, the main factor in favor of Pittsburgh location is petitioner's pro se health problem, see Affidavit of George L. Karapinka, a-18. For the petitioner pro se to drive every day from Morgantown to Clarksburg during a possibly long trial, would be

very prejudicious since he is his own attorney and driving will impare his courtroom performance. On the other hand if the trial were to be held in Pittsburgh, Pa. then the petitioner pro se could stay at his partial residence in his sister's home, avoiding any driving, in Pittsburgh, Pa. for the duration of the trial and thus he will be able to prosecute his case much better.

It has to be stressed that the Magistrate in her Report and Recommendation dated January 14, 1982 did not find a single fact to support the transfer of the case to the Northern District of West Virginia. She, therefore, recommended that the U.S. Government's motion to transfer be denied. U.S. Government had ten days to object; it did not.

The ruling of the U.S. Court of Appeals for the Third Circuit in denying petitioner's Petition for a Writ of Mandamus, and thus permitting the transfer of the case to the Northern District of West Virginia, was contrary to the ruling of the same Court in Shu-

tte v. Armco Steel Corporation, supra. This Petition for a Writ of Certiorari should, therefore, be granted.

II. THE DISTRICT COURT CAN NOT TRANSFER VENUE WITHOUT RULING ON PLAINTIFF'S MOTION TO RESOLVE THE QUESTION OF VENUE WHICH WAS FILED IN THE DISTRICT COURT NINE MONTH BEFORE THE ISSUANCE OF THE TRANSFER ORDER, PRECIPITATING THUS NEEDLESS APPEALS

The consensus of the Courts for the need of a venue hearing, in cases where there are questions in regard to the facts warranting a transfer of venue, is best expressed by the ruling in Plum Tree, Inc. v. Stockment, 488 F.2d 754 (3rd Cir. 1973) at 756:

> "We do not hold that a hearing is necessarily required on every transfer motion, but where,as here, the evidence and arguments supporting transfer were in doubt, a hearing or conference would have been desirable before the district court decided the motion. ... The more significant difficulty here, however, is that there was no evidence before the district court upon which it could base a finding that the transfer order was justified."

The situation in this case under consideration is very similar to Plum Tree, Inc. v. Stockment. Moreover, in the instant case the

petitioner filed a motion for a venue hearing, Motion to Resolve the Question of Venue (a-17,18), which was filed in the District Court ten days after U.S. Government's Motion to Transfer Case to the Northern District of West Virginia (a-14) and nine month before the issuance of the transfer Order. The Honorable Los Mansmann refused to rule on that Motion to Resolve the Question of Venue. He also chose to disregard, as was shown under I above, Magistrate's Report and Recommendation dated January 14, 1982, recommending that the U.S. Government motion to transfer be denied. In view of the facts that the U.S. Government did not present a single concrete fact in favor of transfer, whereas petitioner pro se showed conclusevely that the transfer will be very inconvenient for all of his named witnesses (a-22) and prejudicious to the petitioner pro se because of his health, the Honorable Los Mansmann should have at least ruled on petitioner's Motion

to Resolve the Question of Venue.

The fact that the District Court transferred venue but refused to rule on plaintiff's Motion to Resolve the Question of Venue in view of no established grounds for the transfer, warrants granting by this Court of Petition for a Writ of Certiorari.

III. THE COURT OF APPEALS IN ARRIVING AT ITS DECISION CAN NOT USE DOCUMENTS SUBMITTED BY THE DEFENDANT, DOCUMENTS THAT WERE NEVER FILED IN THE DISTRICT COURT

The duty of the court of appeals is to review the proceedings in the district court and all the facts presented to that court. According to the established judicial procedure the documents that were not before the district court can not be used by the court of appeals.

The respondent, U.S. Government, introduced such documents, the Brief in Support of Motion to Transfer with Exhibits, which was a part of the Brief by the United States in Opposition to Petition for a Writ of Man-

damus. This Brief in Support of Motion to Transfer was never filed in the U.S. District Court for the Western District of Pennsylvania as the Clerk's Docket Entries show. Petitioner moved the U.S. Court of Appeals for the Third Circuit to strike these documents. This motion was denied by the Order of the Court of Appeals dated January 13, 1983, allowing thus into the record of the court of appeals documents that were never filed in the district court.

IV. THE DISTRICT COURT CAN NOT FILE AN APPEAL IN THE UNITED STATES COURT OF APPEALS FOR THE PLAINTIFF WITHOUT HIS KNOWLEDGE AND AGAINST HIS WILL

The U.S. District Court for the Western District of Pennsylvania filed the appeal No. 82-5504 in the U.S. Court of Appeals for the Third Circuit on August 24, 1982 from an unappealable Order, with the petitioner as appellant without his knowledge, moreover, against his will. This forced appeal by the U.S. District Court violated petitioner's

constitutional rights; it also caused to the petitioner expenses. The petitioner believes that no additional argumentation is needed here.

CONCLUSION

The District Court, Honorable Carol Los Mansmann, transferred venue without specifying the basis for such a transfer and in the absence of facts warranting such a transfer.

The ruling of the Court of Appeals in denying Petition for a Writ of Mandamus was contrary to the ruling of the same Court in analogous case in Shutte v. Armco Steel Corporation, 431 F.2d 22 (3rd Cir. 1970).

The District Court transferred venue but refused to rule on plaintiff's Motion to Resolve the Question of Venue, which was filed nine month before the issuance of transfer Order, and in the absence of any established facts for the transfer.

The Court of Appeals in arriving at its decision to deny Petition for a Writ of Man-

damus used documents supplied by the defendant that were never filed in the District Court.

The District Court filed an appeal for the petitioner without his knowledge and against his will.

These decisions and the practices of the U.S. Court of Appeals for the Third Circuit and those of the U.S. District Judge Carol Los Mansmann are departures form the accepted course of the judicial procedure. For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: February 7, 1983.

Respectfully submitted,

GEORGE L. KARAPINKA
Petitioner pro se
3557 Collins Ferry Road
Apt. B-14
Morgantown, West Virginia
26505

(304) 599-8686

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-3393

GEORGE L. KARAPINKA,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

THE HONORABLE CAROL LOS MANSMANN,
UNITED STATES DISTRICT COURT JUDGE,
Nominal Respondent
(E.D.Pa. Civil No. 81-915)

Present: WEIS, BECKER and DUSEN, Circuit Judges.

MEMORANDUM AND ORDER

Defendant moved the district court to transfer this case from the Western District of Pennsylvania to the Northern District of West Virginia. The district judge granted the motion, citing both 42 U.S.C. Sec. 2000e-5(f)(3) and 28 U.S.C. Sec. 1404(a). Adequete facts were stated in the district court's Memorandum to sustain a transfer under 28 U.S.C. Sec. 1404(a). We do not pass upon the merits of a transfer based upon 28 U.S.C. Sec. 1406(a) and 42 U.S.C. Sec. 2000-5(f)(3). We sug-

gest that the district court modify its order to read as follows:

> And, now, ___ day of _____, 1982, the motion to transfer filed by the defendant is hereby Granted and the above captioned case is transferred to the United States District Court for the Northern District of West Virginia, Clarksburg Division. See 28 U.S.C. Sec. 1404(a).

Accordingly, finding no basis for the issuance of a writ of mandamus, the petition for the grant of that writ is denied.

BY THE COURT,

x Weis
Circuit Judge
(first name and initials unlegible)

DATED: December 6, 1982

dt/cc: Mr. GLK
PJB

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA, Plaintiff	)	
vs.	)	Civil Action
UNITED STATES GOVERNMENT, Defendant	)	No. 81-915

MEMORANDUM OPINION

This case comes before this Court on a Complaint filed pro se by Plaintiff in which he alleges, inter alia, that he was dismissed from his position as research chemist from the United States Department of Energy because of his national origin and as a reprisal for pointing out instances of mismanagement in the Department. Plaintiff further alleges that his First Amendment right of free speech and his right of privacy in his mail were also violated. He brings his action pursuant to Title VII of the Civil Rights Act.

Plaintiff's Complaint was received by the Clerk of Court on June 8, 1981, and was referred to the United States Magistrate for pretrial proceedings in accordance with the Ma-

gistrate's Act, 28 U.S.C. Sec. 636(b)(1) and Rules 3 and 4 of the Local Rules for Magistrates. Numerous pre-trial motions were filed and decided by the Magistrate, whose Report and Recommendations were subsequently adopted by U.S. District Judge Maurice B. Cohill. Those motions have been resolved and are not under consideration here.

At issue before this Court are two pending motions: a Motion for Summary Judgment filed by the Plaintiff and a Motion to Transfer filed by the Defendant. Both Motions were decided by the Magistrate and each was the subject of a separate Report and Recommendation. Since thir Court is of the opinion that venue does not properly lie within the Western District of Pennsylvania, and is, therefore, granting the Motion to Transfer, the Motion for Summary Judgment is not addressed.[1] Only the Motion to Transfer is at

[1] This Motion will be duly sent to the District Court to which this matter is transferred for consideration by that court.

issue here.

The factual background of this case shows that on August 8, 1980, Plaintiff was dismissed from his position as a research chemist for the United States Department of Energy in Morgantown, West Virginia. Plaintiff appealed this dismissal to the Merit System Protection Board (MSPB), which sustained the finding of the Philadelphia Field Office of the Board that Plaintiff had been removed from his position because of inefficient performance. Plaintiff then filed the instant action in the Western District of Pennsylvania and Defendant responded by filing a Motion to Dismiss for Lack of Venue which was, after a de novo review of the Magistrate's Report and Recommendation, denied by District Judge Cohill. Defendant then filed a Motion to Transfer, alleging in essence that venue was improper since there are no contacts in this judicial district whatsoever, since Plaintiff was employed, resided and presently resides in West Virginia; all of the employ-

ment records are in West Virginia; and all of the witnesses are in West Virginia.

On January 14, 1982, the Magistrate filed a Report which recommended that Defendant's Motion to Transfer be denied. The parties were given ten days from the day of service to file objections to the Report and Recommendation.[2]

---

[2] If timely objections are filed, the district court is required to conduct a de novo review. However, if no objections are filed, it is within the discretion of the court to determine the standart of review. Since under the Federal Magistrate Act, 28 U.S.C.A. 636 (b)(1) the ultimate decision is to be made by the district judge and not the magistrate, the district judge is precluded only from accepting the magistrate's report and recommendation without any review whatsoever. Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). The court is aware of Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980) in which failure to file objections resulted in the forfeiture of the right of appeal from the district court's judgment, but since that is not at issue here, Park is not dispositive.

Although a resident of Morgantown, West Virginia, Plaintiff states that he filed his action here solely because, as the result of surgery, he stays part of the time with his sister in Pittsburgh, PA. It should be noted that Plaintiff had been permitted to amend his Complaint and he alleged therein that:

"1. All of the discriminatory practices committed against me in the United States Government were done in Morgantown (Northern West Virginia), with the exception of:

a) The harrassment to prevent the filing of my patent application. The violations were performed in Morgantown (Northern West Virginia), Oak Ridge (Tennessee) and Washington (District of Columbia).

b) The unlawfull (sic) discriminatory practices of the U.S. Merit Systems Protection Board in the process of my appeal were committed in Morgantown (Nrthern Vest Wirginia), (sic) Philadelphia (Pennsylvania), Washington (District of Columbia). I do not know where the falsification of the transcript of my appeal hearing was committed.

2. The employment records relavant (sic) to the unlawfull and discriminatory practices of the United States Government against me are probably maintained and administered in the judicial district of Northern West Virginia.

3. I probably would have worked in the ju-

dicial district of Northern West Virginia if I had not been removed from my position. There was a possibility of my transfer to Pittsbrgh (Pennsylvania), Washington (District of Columbia, or other Department of Energy locations."

Since Plaintiff is a federal employee, the applicable statute in determining the proper venue for an employment discrimination suit is 42 U.S.C. Sec. 2000e-16. Subsection (d) of that Act adopts 42 U.S.C. Sec. 2000e-5(f) which states:

> (3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relavant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office.

The Magistrate interpreted the above statute as positing venue <u>anywhere</u> in the state where an unlawful discriminatory act was com-

mitted and therefore recommended rhat the Motion to Transfer be denied because Plaintiff alleged that such unlawful "practices were committed, inter alia, in Philadelphia, PA" (namely, by the MSPB) and that venue was, therefore, proper in any judicial district in Pennsylvania.

In reading 42 U.S.C. 2000e-5(f), this Court reaches a contrary conclusion since it does not believe that the phrase "in which the unlawful employment practice is alleged to have been committed," etc., is a dependent clause which modifies "in the State". The untecedent of the dependent clause is not "in the State" but "any judicial district" which is also modified by "in the State". Assuming as true Plaintiff's allegations that unlawful discriminatory practices were committed by the MSPB against him in Philadelphia, PA, those acts were commited in the Eastern District of Philadelphia and not in the Western District where Plaintiff has filed his Complaint. Therefore, in order to re-

ly on that section of the statute, Plaintiff action should have been maintained in the Eastern District of Pennsylvania.

However, Defendant seeks transfer of this action to the Northern District of West Virginia pursuant to 28 U.S.C. 1404 (a). "Venue is primarily designed to protect defendants from inconvenient forums and courts from inconvenient lawsuits." Whittier v. Emmett, 281 F.2d 24, 30 (D.C. Cir. 1960). An examination of Plaintiff's responses to the Magistrate's request to amend his Complaint demonstrates that according to his allegations the majority of the discriminatory practices were committed in Northern West Virginia; harassment to prevent filing of his patent application occured in Northern West Virginia, inter alia; unlawful discriminatory practices by the United States Merit Systems Protection Board occurred in Northern West Virginia, inter alia; employment records relevant to the discriminatory

practices may be maintained in Northern West Virginia, inter alia; and Plaintiff, had he not been removed from his position, would probably have continued to work in Northern West Virginia.

Interpreting Plaintiff's statements in the light most favorable to him and bearing in mind the purpose of venue statutes, Defendant's Motion to Transfer to the Northern District of West Virginia is granted. It being the determination of this Court that venue is not proper in the Western District of Pennsylvania, Plaintiff's Motion for Summary Judgment is not properly before this Court and will be sent with the record for consideration before the Court in the Northern District of West Virginia. An appropriate Order follows.

x Carol Los Mansmann

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA,
Plaintiff

vs.

UNITED STATES GOVERNMENT,
Defendant

Civil Action
No. 81-915

ORDER

And now, this 9th day of August, 1982, the Motion to Transfer by the Defendant is hereby GRANTED and the above-captioned case is transferred to the U.S. District Court for the Northern District of West Virginia.

The Report and Recommendation of the Magistrate dated January 14, 1982 is not adopted as the Opinion of this Court.

The Motion for Summary Judgment filed by the Plaintiff, and the Report and Recommendation of the Magistrate dated January 19,1982 with respect to the Motion are sent to the U.S. District court for the Northern District of West Virginia for consideration.

x Carol Los Mansmann
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA,
Plaintiff

vs.

UNITED STATES GOVERNMENT,
Defendant

Civil Action
No. 81-915

O R D E R

In accordance with the MEMORANDUM AND ORDER dated December 6, 1982 of The United States Court of Appeals for the Third Circuit at No. 82-3393, the Order of this Court entered August 9, 1982 is hereby modified as follows:

And now, this 13th day of December 1982, the motion to transfer filed by the defendant is hereby Granted and the above captioned case is transferred to the United States District Court for the Northern District of West Virginia, Clarksburg Division. See 28 U.S.C. 1404(a).

x Carol Los Mansmann
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA,
Plaintiff

v.

UNITED STATES GOVERNMENT,
Defendant

Civil Action
No. 81-915

MOTION TO TRANSFER CASE TO THE
NORTHERN DISTRICT OF WEST VIRGINIA

AND NOW comes the United States of America, by its Attorneys, J. Alan Johnson, United States Attorney for the Western District of Pennsylvania and Judith K. Giltenboth, Assistant United States Attorney for said District, and moves that this Honorable Court transfer this case to the Northern District of West Virginia for the reason that the Western District of Pennsylvania is an inconvenient forum as follows:

1. Plaintiff alleges an 80% residence in Morgantown, West Virginia and a 20% "partial residence" in Pittsburgh, PA at his unidentified sister's undisclosed address in Pittsburgh, PA.

2. The allegetly discriminatory acts oc-

cured in Morgantown, West Virginia and by virtue of an administrative hearing and the alleged storage of administrative records in Philadelphia, PA.

3. All of the witnesses and primary documents involved in this action are in Morgantown, West Virginia.

4. The Western District of Pennsylvania is an inconvenient forum for the prosecution and defense of this suit.

WHEREFORE, the United States of America respectfully requests this Honorable Court to transfer the action to the federal court in the Northern District of West Virginia.

Respectfully submitted,

A. ALAN JOHNSON
United States Attorney

by: JUDITH K. GILTENBOTH
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA,
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UNITED STATES GOVERNMENT,
Defendant

Civil Action
No. 81-915

O R D E R

AND NOW, to wit, this ____day of _____, 1981, it is hereby ORDERED that the action captioned "George L. Karapinka v. United States Government at Civil Action No. 81-915 (Western District of Pennsylvania) is transferred to the Northern District of West Virginia for the reason that the Western District of Pennsylvania is an inconvenient forum.

UNITED STATES DISTRICT JUDGE

cc: All counsel of record

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA,
Plaintiff

vs

UNITED STATES GOVERNMENT,
Defendant

Civil Action
No. 81-915

MOTION TO RESOLVE THE QUESTION OF VENUE

I, George L. Karapinka the plaintiff respectfully request the Honorable Court to schedule the argument to resolve the question of venue on the above named action, which was raised by the defendant.

The complaint was filed on June 8, 1981. The summons was served upon the defendant on June 29, 1981. On July 17, 1981 the defendant filed motion to dismiss for lack of venue. This motion for some unknown reason was never scheduled for argument.

The plaintiff respectfully requests the Honorable Court to schedule plaintiff's motion to resolve the question of venue as soon as possible.

Respectfully submitted,

x George L. Karapinka
Plaintiff, pro se

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA,
Plaintiff

vs.

UNITED STATES GOVERNMENT,
Defendant

Civil Action
No. 81-915

AFFIDAVIT OF GEORGE L.
KARAPINKA

State of Pennsylvania
County of Allegheny

George L. Karapinka, of full age, being duly sworn upon his oath, deposes and says:

1. I make this affidavit to support my right of venue in the Western District of Pennsylvania.

2. I undervent the open heart surgery to replace my aortic valve in Pittsburgh, Pennsylvania in August of 1979.

3. I resided at my sister's Orysia Karapinka appartment, 5830 Elwood, Pittsburgh, Pennsylvania, 15232.

4. Prolonged drives impare my performance for at least one day.

5. Unlawfull employment practices were

committed by the United States Merit Systems Protection Board in Philadelphia, Pennsylvania.

x George L. Karapinka
George L. Karapinka

Sworn and subscribed
before me this 2nd day
of November, 1981.

x Mildred Eckert

Notary Public
4600 Fifth Ave.
Pgh; Pa. 15213

MILDRED ECKERT, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES AUG. 31, 1982
Member, Pennsylvania Association of Notaries

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GEORGE L. KARAPINKA Plaintiff vs. UNITED STATES GOVERNMENT, Defendant	Civil Action No. 81-915

ANSWER IN OPPOSITION TO THE MOTION TO TRANSFER THE CASE TO THE NORTHERN DISTRICT OF WEST VIRGINIA

The plaintiff respectfully requests the Honorable Court to dismiss the defendant's motion to transfer this case for the following reasons:

1. The unsworn alligations listed under "Facts" of the dwfendant's Brief in Support of Motion to Transfer are totally irrelevant to the subject matter of this motion. So are the unsworn Exhibits, which in addition of not being relevant, are prejudicious to the plaintiff.

2. The affidavit of Judith K. Giltenboth is meaningless. The affiant does not have first hand information. She avers to the unsworn information obtained from some agents. Contrary to the information in the affidavit

the records relevant to this action of Inspector General, U.S. Department of Energy are not located in West Virginia, they were and are located in Washington, D.C. The records of Special Counsel, U.S. Merit Systems Protection Board and the records of U.S. Merit Systems Protection Board were and are located in Washington, D.C. and Philadelphia, Pa. All of these agencies are part to this action (see the complaint).

The main fallacy of defendant's argument is the omission of the fact that there is no U.S. District Courthouse in Morgantown, W.V. Transportation of the records and witnesses from Morgantown, W.V. to the courthouse in the Northern District of West Virginia would be at least as difficult and expensive as their transportation to Pittsburgh, Pa. Transportation of witnesses from Morgantown, W.V to Pittsburgh, Pa. is more convenient than to the U.S. District courthouse of the Northern District of West Virginia in Elkins or most probably in Wheeling, W.V. Wheeling and

Pittsburgh are roughly equidistant from Morgantown. Moreover, it will be much more feasible for the following witnesses, all U.S. Government employees, to trevel to Pittsburgh, Pa.: Wm. J. Bayley resident of Washington, Pa.; D.A. Fontinella, B.D. Prasher, S.J. Sugiyama all residents of Washington, D.C. area; F.L. Fishman resident of Philadelphia, Pa. area; E.L. Larcher resident of Oak Ridge, Ten. area; than to trevel to the Northern District of West Virginia courthouse, most probably, in Wheeling, W.V. All of these witnesses will be subpenoed.

3. The most important reason why this action should remain in the Western District of Pennsylvania, is plaintiff's health reason. As described in the previous pleadings, inter alia, affidavit of George L. Karapinka to support his right of venue in the Western District of Pennsylvania, filed November 2, 1981 the plaintiff undervent the open heart surgery to replace his aortic valve, and drives from Morgantown, W.V. to Elkins or most pro-

bably to Wheeling, W.V. will impare his performance in the courtroom. During the proceedings on this action in Pittsburgh, Pa., the plaintiff will reside at his sister's apartement in Pittsburgh, Pa. The transfer of this action to the Northern District of West Virginia will be prejudicious to the plaintiff. Therefore, the justice will only be served in the Western District of Pennsylvania (Pittsburgh, Pa.) and not in the Northern District of West Virginia.

Respectfully submitted,

x George L. Karapinka
Plaintiff, pro se